

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alfredo Gonzalez	Team: Squad #3	CCRB Case #: 201701637	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 03/03/2017 7:15 PM	Location of Incident: In front of 2079 86th Street	Precinct: 62	18 Mo. SOL 9/3/2018	EO SOL 9/3/2018	
Date/Time CV Reported Mon, 03/06/2017 7:40 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 03/06/2017 7:40 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Eduard Nogol	17002	931851	062 PCT
2. POM Roman Vilnyanskiy	12874	953534	062 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Eduard Nogol	Abuse: Police Officer Eduard Nogol stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Roman Vilnyanskiy	Abuse: Police Officer Roman Vilnyanskiy stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM Eduard Nogol	Abuse: Police Officer Eduard Nogol searched the vehicle in which § 87(2)(b) was an occupant.	
D.POM Eduard Nogol	Abuse: Police Officer Eduard Nogol searched the vehicle in which § 87(2)(b) was an occupant.	
E.POM Eduard Nogol	Abuse: Police Officer Eduard Nogol issued § 87(2)(b) a summons.	
F.POM Eduard Nogol	Abuse: Police Officer Eduard Nogol issued § 87(2)(b) a summons.	

Case Summary

§ 87(2)(b) filed this complaint with the CCRB on March 6, 2017, via the on-line website.

On March 3, 2017, at approximately 7:15 p.m., PO Eduard Nogol and PO Roman Vilnyanskiy of the 62nd Precinct stopped § 87(2)(b) – who was operating as an Uber driver at the time – in the vicinity of 2079 86th Street in Brooklyn because his high beams were on (**Allegations A and B**). During the vehicle stop, PO Nogol allegedly opened the driver's side door and manipulated § 87(2)(b)'s headlights in order to turn off his high beams (**Allegation C**). Afterward, PO Nogol and PO Vilnyanskiy observed that one of the headlights was not functioning. PO Nogol obtained § 87(2)(b)'s license and registration and returned to the police vehicle, allegedly closing the trunk to § 87(2)(b)'s vehicle on his way back to his RMP; § 87(2)(b) believed PO Nogol opened the trunk at some point after opening § 87(2)(b)'s door (**Allegation D**). PO Nogol returned to § 87(2)(b) and asked him for the trip sheet, and § 87(2)(b) explained that he did not have one because he uses the Uber app. PO Nogol then requested that § 87(2)(b) show him his fire extinguisher, after which § 87(2)(b) exited his vehicle, opened his trunk, and showed PO Nogol the fire extinguisher (**within Allegation D**). PO Nogol then requested that § 87(2)(b) show him the first-aid kit, but § 87(2)(b) told him that he did not have one. PO Nogol issued § 87(2)(b) four summonses: two VTL summonses for failing to dim his headlights and for the broken headlight, and two C-summonses for not having a trip sheet and for not having a first-aid kit (**Allegations E and F**).

There was no video footage available for this incident.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to participate in mediation § 87(2)(b)
- As of May 2, 2017, § 87(2)(b) has not filed a Notice of Claim against the City of New York (BR 01).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (BR 03).
- PO Nogol has been a member of the NYPD for 14 years. He has been the subject of 12 previous allegations stemming from eight cases. In CCRB 201305853, an entry allegation and a search allegation were substantiated against him.
- PO Vilnyanskiy has been a member of the NYPD for four years. He has been the subject of one previous allegation that was closed as complainant unavailable.
- § 87(2)(g)

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Eduard Nogol stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation B – Abuse of Authority: Police Officer Roman Vilnyanskiy stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation C – Abuse of Authority: Police Officer Eduard Nogol searched the vehicle in which § 87(2)(b) was an occupant.

On the date of the incident, § 87(2)(b) stated that he was operating as an Uber driver and was on his way to pick up a passenger. As § 87(2)(b) was turning right onto 86th Street from 21st Avenue, PO Vilnyanskiy – whose RMP was on 86th Street – gave § 87(2)(b) some instructions over the loudspeaker, but § 87(2)(b) could not understand them because he does not speak English well and because there was a lot of noise from traffic and the above-ground subway. The RMP then turned around, turned on its lights, and stopped behind § 87(2)(b)'s vehicle. § 87(2)(b) stopped immediately and lowered his window. PO Nogol, the driver of the RMP, approached § 87(2)(b)'s vehicle and aggressively stated, "Let's see if you understand now," or something to that effect, and commanded § 87(2)(b) to park the vehicle, put the brake on, and to turn off the ignition. PO Nogol proceeded to allegedly open § 87(2)(b)'s door "violently," which caused § 87(2)(b)'s cellphone – which was attached to a device near the driver's side door – to fall out of the vehicle and onto the ground. PO Nogol then made some other statements, but § 87(2)(b) could not understand them. PO Nogol proceeded to manipulate the vehicle's headlights while PO Vilnyanskiy was in front of § 87(2)(b)'s vehicle checking the lights. § 87(2)(b) stated that he was unaware that his high beams were on at the time (BR 04). § 87(2)(g)

§ 87(2)(b).

PO Nogol testified that he and PO Vilnyanskiy were stuck in traffic and were a few cars removed from the intersection on 86th Street and 21st Avenue when they observed § 87(2)(b)'s vehicle with its high beams on driving southbound on 21st Avenue and turning right onto 86th Street. While the vehicle was making the turn, PO Vilnyanskiy went over the PA system and asked the motorist to turn off his high beams. PO Nogol noted that § 87(2)(b) was driving with traffic, with cars driving against him and behind him. PO Vilnyanskiy instructed § 87(2)(b) at least two times over the PA system to turn off his high beams, but § 87(2)(b) did not do so. PO Nogol noted that the PA system was working properly and that there was no environmental noise to obstruct § 87(2)(b) from hearing PO Vilnyanskiy's instructions. § 87(2)(b) proceeded to make a right turn onto 86th Street but became stuck in traffic parallel to PO Nogol's RMP. PO Nogol motioned for § 87(2)(b) to lower his window, and § 87(2)(b) complied. PO Nogol then told § 87(2)(b) to turn off his high beams, but § 87(2)(b) cupped his ear as if he could not hear him. PO Nogol asked him a second time to turn off his high beams, but § 87(2)(b) again indicated that he could not hear. PO Nogol then got out of his car, reached into § 87(2)(b)'s vehicle through the open window, and turned off the high beams because there were vehicles behind PO Nogol's RMP that were "being blinded"

by them. PO Nogol then requested § 87(2)(b)'s license and registration and instructed him to pull over to the side (BR 06). § 87(2)(g)

§ 87(2)(b) PO Vilnyanskiy believed that § 87(2)(b) turned off his high beams himself after the stop was initiated (BR 07).

An officer may stop a vehicle based upon probable cause that the driver has committed a traffic infraction. People v. Robinson, 97 N.Y.2d 341 (2001) (BR 08). Whenever a vehicle approaching from ahead is within five hundred feet, or when approaching a moving vehicle from the rear and within two hundred feet of the same, the headlamps, if of the multiple beam type, or the auxiliary front facing lamps, if the vehicle is so equipped, shall be operated so that dazzling light does not interfere with the driver of the approaching vehicle, or the vehicle being approached. NY Vehicle and Traffic Law, §375 (3) (BR 09).

§ 87(2)(g)

Allegation D – Abuse of Authority: Police Officer Eduard Nogol searched the vehicle in which § 87(2)(b) was an occupant.

Allegation E – Abuse of Authority: Police Officer Eduard Nogol issued § 87(2)(b) a summons.

Allegation F – Abuse of Authority: Police Officer Eduard Nogol issued § 87(2)(b) a summons.

§ 87(2)(b) stated that after the stop was initiated, PO Nogol asked him for his license and registration, which he provided. PO Nogol then walked back to his RMP, but before reaching it, he went towards the back of § 87(2)(b)'s vehicle and closed the vehicle's trunk. § 87(2)(b) believed that PO Nogol searched the trunk prior to that, but he failed to observe it because of his nervousness. § 87(2)(b) also stated that he did not observe PO Nogol open the trunk, but believed PO Nogol did so when he leaned into his vehicle to manipulate the headlights' controls given that the lever to open the trunk is to the left of the driver's side door on the floor. When PO Nogol returned, he asked § 87(2)(b) for his trip sheet and § 87(2)(b) explained that he does not have one because he uses the Uber app. PO Nogol then allegedly stated, "Oh, you don't know what a trip sheet is?" PO Nogol then requested that § 87(2)(b) show him the fire extinguisher. § 87(2)(b) exited his vehicle and showed him the fire extinguisher, which was in a compartment inside of the trunk. § 87(2)(b) then re-entered his vehicle. PO Nogol then asked § 87(2)(b) for his Taxi and Limousine Commission (TLC) license, which he provided, and asked § 87(2)(b) for the first aid kit, but § 87(2)(b) told him that he

did not have one. PO Nogol issued § 87(2)(b) four summonses: two C-summonses for not having a trip sheet log and for not having a first aid kit in a TLC vehicle, and two VTL summonses for a defective head light in the front passenger side and for failure to dim headlight beams/improper use of head lamps (BR 04) § 87(2)(g)

§ 87(2)(b) provided a screenshot of an Uber trip he completed prior to being pulled over. The screen shot demonstrated that the trip was completed in the general vicinity of the incident location (BR 15, 17).

PO Nogol stated that after he obtained § 87(2)(b)'s information and checked to see whether he had a valid driver's license or any active warrants, he returned to § 87(2)(b)'s vehicle and asked him if he was operating as a TLC vehicle, and § 87(2)(b) answered affirmatively. PO Nogol asked § 87(2)(b) if he had everything in order regarding "his TLC," to which he stated, "Yes." PO Nogol then asked § 87(2)(b) whether he had a trip sheet, either on paper or on an app, and § 87(2)(b) stated that he did not and that he kept his trip history in text messages. PO Nogol also asked § 87(2)(b) whether he was an Uber driver, and § 87(2)(b) stated that he was not. PO Nogol denied that § 87(2)(b) identified himself as an Uber driver or that he told him that he used the Uber app as a trip sheet. PO Nogol then "asked § 87(2)(b) for his safety equipment" (a fire extinguisher and first-aid kit). § 87(2)(b) exited his vehicle and opened the trunk to show PO Nogol the fire extinguisher, which was in the spare tire well, but he did not have a first-aid kit. PO Nogol denied ever opening the trunk himself. When asked if there were any other factors in searching the trunk other than for the safety equipment, PO Nogol stated, "Nope." When asked if there was a language barrier between him and § 87(2)(b) PO Nogol initially stated that § 87(2)(b) spoke broken English but could understand. PO Nogol then clarified that § 87(2)(b) spoke English but with a "heavy" accent. PO Nogol also noted that he asked § 87(2)(b) to exit the vehicle at one point because of his behavior as PO Nogol did not believe that there was any miscommunication between them. PO Nogol added that he did not know if § 87(2)(b)'s behavior was due to "something a little bit more," and PO Nogol did not know why § 87(2)(b) was "avoiding" him or acting like he did not understand him. PO Nogol issued § 87(2)(b) two VTL violation summonses for failing to dim his high beams for incoming traffic and for having a broken headlight. PO Nogol also issued him two criminal summonses for not having a trip sheet and for not having a first-aid kit. To the best of PO Nogol's knowledge, the NYC Administrative Code and the Transportation Law require TLC vehicles to have a first-aid kit, a fire extinguisher, and a trip sheet. PO Nogol also noted that he considered the request to see these items an administrative search. PO Nogol denied that § 87(2)(b)'s behavior factored into his decision to issue him additional summonses (BR 06). PO Vilnyanskiy had little recollection regarding PO Nogol's interaction with § 87(2)(b) and he could not recall whether there was a language barrier with § 87(2)(b) whether his trunk was searched, or whether there was any discussion regarding a trip sheet, first-aid kit, or a fire extinguisher (BR 07).

The summons issued for the trip sheet noted that § 87(2)(b) stated to PO Nogol, "I don't do that (use trip sheet)" (BR 10). § 87(2)(b)'s copy of the summons issued for the trip sheet listed the offense as "No trip sheet (log book)" (BR 16).

Every driver of a motor truck or motor bus shall keep and carry on the vehicle records showing the day and hour when and the place where he went and was released from duty. The commissioner shall prescribe the form of such records and may require such other information to be shown thereon as he shall deem advisable to insure the proper enforcement of this article. Such records shall be exhibited to the commissioner, his representatives, or to any peace officer or police officer who shall demand to see the same. Failure to produce such records upon demand shall be presumptive evidence of a violation of this article relating to keeping such records. NY Transportation Law §212 (BR 11).

Every omnibus operating upon the public highways of the state having a carrying capacity of ten or more passengers, shall be equipped with one hand fire extinguisher. NY Vehicle and Traffic Law §375 (9) (BR 09).

All motor vehicles for hire, used to transport any persons, with a seating capacity of ten or more persons, including the driver, shall provide equipment and maintain on board the vehicle at all times, a complete first aid kit containing all that equipment reasonably calculated to provide emergency medical aid to injured persons. NYC Administrative Code § 10-153 (BR 12).

An officer may not request consent to search of a vehicle – an “exercise of the common-law right of inquiry” – without founded suspicion of criminality; this requirement is necessary even if the officer has probable cause to arrest the motorist for a traffic misdemeanor and search of the motorist’s person. People v. Mercado, 120 A.D.3d 441 (BR 13).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

Squad: _____

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date